

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1287-04
Bill No.: Truly Agreed To and Finally Passed CCS for SCS for HB 471
Subject: Crimes and Punishment; Drugs and Controlled Substances
Type: Original
Date: May 30, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$94,264 to Unknown)	(\$222,326 to Unknown)	(\$243,781 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$94,264 to Unknown)	(\$222,326 to Unknown)	(\$243,781 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 10 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services, Office of Administration, Department of Public Safety – State Highway Patrol, Office of State Treasurer, and the Department of Mental Health** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Prosecution Services** assume the cost of the proposed legislation could be absorbed within the existing resources.

Adds “ecstasy” to drug trafficking statutes and Schedules of controlled substances (Sections 195.017, 195.070, 195.222, 195.223, and 195.400)

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on their agency.

In response to a similar proposal (HB 209), officials from the **Department of Health** assume the proposal would not fiscally impact their agency.

Officials from the **Office of State Public Defender** assume that existing staff could provide representation for those cases arising where indigent persons were charged with drug trafficking. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Department of Corrections (DOC)** assume drug trafficking (first and second degree) accounted for 162 offenders incarcerated in CY2000. In the same time period, there were 317 admissions to probation. Drug testing done by the DOC picks up MDMA in the amphetamine positives. Upon confirmation, it can then be determined if the positive reading is from methamphetamine, ecstasy, etc. Perhaps statistics from drug tests from another source at the time of arrest could provide counts with which to estimate the potential fiscal impact of this proposal. It is not possible under current Missouri Charge Codes to know how many admissions could have been for the ecstasy drug picked up under amphetamine testing in past arrests and subsequent convictions.

The specific quantities and penalties outlined in this proposal for trafficking ecstasy could prove to increase arrests and convictions and subsequently the resulting fiscal impact for the DOC through costs related to incarcerations and supervision. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY99 average of \$35.61 per inmate, per ASSUMPTION (continued)

day) or through supervision provided by the board of Probation and Parole (FY99 average of \$2.47 per offender, per day). An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

In response to a similar proposal (HB 209), the DOC could not predict the number of new commitments which could result from the provisions of this proposal regarding controlled substances. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts. If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs either through incarceration (FY99 average \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (FY99 average \$2.47 per offender, per day). Supervision by the DOC through probation or incarceration would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

The following factors contribute to the DOC's minimal assumption:

- DOC assumes the narrow scope of the crime will not encompass a large number of offenders;
- The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence; and
- The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

Due to the wide variance of crimes and punishments, including newly created crimes and punishments, the fiscal impact as it relates to the DOC is unknown per year. If long-range fiscal impact would prove to be an amount in excess of that which could be absorbed by DOC, any costs profiled in this fiscal note would be requested through normal budgetary request procedures for the time periods affected by passage of this proposal

The DOC does not anticipate the need for additional capital improvements at this time. It must be noted that the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding if the total number of new offenders exceeds current planned capacity.

Oversight assumes, based on the average incarceration cost per inmate, if eight persons are incarcerated, the unknown cost to DOC will exceed \$100,000.

ASSUMPTION (continued)

Establish a Drug Courts Coordinating Commission – Section 478.009

Officials from the **Office of State Courts Administrator** assume the proposal would have no fiscal impact on their agency.

In response to a similar proposal in the prior session, officials from the **Office of the Attorney General** and the **Department of Corrections** assumed the proposal would have no fiscal impact on their agencies.

Officials from the **Department of Social Services (DOS)** assume the only responsibility for DOC is for the Director to select one member of the Commission. There is no fiscal impact. DOS assumes that expenses associated with participation on the Commission would be reimbursed by the Judicial Department.

In response to a similar proposal in the prior session, officials from the **Department of Public Safety (DPS)** assumed the proposal would create a Drug Court Commission to oversee all drug courts in the state of Missouri. The Commission would consist of eight members, one to be selected by the director of the Department of Public Safety. DPS assumes the expenses incurred by the commissioner appointed by DPS (i.e., mileage, meals, and hotel) would cost their agency approximately \$4,800 annually.

Oversight assumes that all of the members of the Drug Court Commission would be selected by state agencies which have offices geographically located in Jefferson City, Missouri, and the proposal does not require meetings to be held outside of Jefferson City. Therefore, Oversight assumes that any mileage, meal, and hotel expenses would be minimal and could be absorbed with existing resources. Oversight assumes that any costs associated with the creation of the Drug Court Resources Fund would be minimal and could be absorbed with existing resources.

Anhydrous ammonia/methamphetamine precursors – Sections 195.005, 195.246, 195.417, 195.418, 537.297, 570.030, 578.154

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Department of Health (DOH)** assume the proposed legislation is not expected to significantly impact the operations of the DOH. If the proposal were to substantially impact the DOH programs, the department would request funding through the appropriations process.

ASSUMPTION (continued)

Officials from the **Office of the State Public Defender** assume that existing staff could provide representation for those 25-50 cases arising where the indigent persons were charged with theft or attempted theft of anhydrous ammonia or liquid nitrogen. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Office of Secretary of State (SOS)** assume the proposal restricts and amends crimes relating to anhydrous ammonia and precursors to methamphetamine. The Department of Health will promulgate rules to implement this proposal. Based on experience with other divisions, the rules, regulations, and forms issued by the Department of Health could require as many as 26 pages in the Code of State Regulations. For any given rule, roughly half again as many pages are published in the Missouri Register as in the Code because cost statements, fiscal notes, and the like are not repeated in Code. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulation is \$27.00. Based on these costs, the estimated cost of the proposal is \$1,599 in FY 2002 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

Oversight assumes the SOS would absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Corrections (DOC)** assume they are unable to determine the number of people who would be convicted for theft of anhydrous ammonia or possession of anhydrous ammonia, as detailed in this proposal. The DOC had a significant increase in the number of admissions for theft of anhydrous ammonia over the past two years (3 admissions in FY 99 and 18 admissions in FY00). The current average length of incarceration is 15 months for a class D felony and 19 months for a class C felony. New commitments which may result from the creation of the new offenses outlined in this proposal cannot be accurately determined. The utilization of these laws for both of these new offenses and enhanced penalties for current offenses depends on the actions of prosecutors and the courts. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation regarding theft of anhydrous ammonia or possession of anhydrous ammonia, the DOC will incur a corresponding increase in operational costs either through incarceration (FY99 average of \$35.61 per inmate, per day) or through supervision provided by the Board of Probation and Parole (FY99 average of \$2.47 per offender, per day).

ASSUMPTION (continued)

In FY00, the DOC had 15 admissions to prison and 30 to probation for possession of ephedrine

or its derivatives with intent to manufacture methamphetamine. Probation also had 1 admission charged with distribution. These offenses were charged as class D felonies. Although the number of commitments due to the creation of the new crimes is unknown, DOC conservatively expects the offenders who will be convicted of sales, purchases, or possession of certain precursors to methamphetamine to be at least as many as those convicted for possession with intent to manufacture. Therefore, the DOC estimates that, in any given year, there will be 15 prison admissions serving an average of 10 months (the average time served for class D felony offenders in FY00) and 30 probation case openings supervised 4 years (the average probation for class D felonies in FY00).

DOC estimates the increase in population will increase incrementally over the fiscal year. For cost estimates a snapshot of the midyear average population was used to determine fiscal impact.

The assumptions used by the DOC to determine cost, and rounded to the nearest whole number, include:

- \$35.61 (FY99 cost) inmate per capita costs with an inflation rate of 3% per each subsequent year; and
- \$2.47 (FY99 cost) supervision costs with an inflation rate of 3% per each subsequent year.

	AVERAGE	OPERATING	AVERAGE	OPERATING	TOTAL COST
	POPULATION	EXPENSE	POPULATION	EXPENSE	W/ INFLATION
	(Incarceration)	(Incarceration)	(Probation)	(Probation)	
FY 2002	13	\$77,998	15	\$13,530	\$94,264
FY 2003	13	\$168,974	45	\$40,590	\$222,326
FY 2004	13	\$168,974	60	\$54,120	\$243,781

Based on the above-mentioned assumptions, the long range fiscal impact to the DOC is unknown, but is estimated at least to include the costs as follows:

ASSUMPTION (continued)

	AVERAGE	OPERATING	AVERAGE	OPERATING	TOTAL COST
	POPULATION	EXPENSE	POPULATION	EXPENSE	W/ INFLATION
	(Incarceration)	(Incarceration)	(Probation)	(Probation)	
FY 2005	13	\$168,974	60	\$54,120	\$251,094
FY 2006	13	\$168,974	60	\$54,120	\$258,627
FY 2007	13	\$168,974	60	\$54,120	\$266,386
FY 2008	13	\$168,974	60	\$54,120	\$274,377
FY 2009	13	\$168,974	60	\$54,120	\$282,609
FY 2010	13	\$168,974	60	\$54,120	\$291,087
FY 2011	13	\$168,974	60	\$54,120	\$299,820
Total Ten-Year Fiscal Impact:					\$2,484,371

At this time, the DOC is unable to determine the number of people who would be convicted under the provisions of this proposal to estimate the potential need for additional capital improvements. Estimated construction cost for one new medium-security inmate bed is \$48,300 at FY99 average costs. A maximum security inmate bed is \$55,000, also using FY99 average costs. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

FISCAL IMPACT - State Government

FY 2002
(10 Mo.)

FY 2003

FY 2004

GENERAL REVENUE FUND

Costs - Department of Corrections

Incarceration/Probation costs

(\$94,264 to
Unknown)

(\$222,326 to
Unknown)

(\$243,781 to
Unknown)

FISCAL IMPACT - Local Government

FY 2002
(10 Mo.)

FY 2003

FY 2004

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would define “methamphetamine precursor drug.” Possession of more than 24 grams of any methamphetamine precursor drug would be prima facie evidence of the intent to deliver or possess with intent to deliver or manufacture and would be a class D felony. (Section 195.010, 195.235, and 195.246).

This proposed legislation would add gamma hydroxybutyric acid (GHB) to the Schedule I list of controlled substances. GHB contained in a drug product approved by federal law and ketamine would be added to Schedule III. Currently, ketamine is a Schedule IV controlled substance. The proposal would require that certain professionals may only use individuals authorized by statute to dispense controlled substances; currently, a nurse or graduate physician under the professional's direction and supervision may dispense such substances. (Section 195.017).

The proposal would also add distribution or manufacture of more than 30 grams of any material containing any amount of the substance 3,4-methylenedioxymethamphetamine (commonly known as "ecstasy") to the crime of trafficking drugs in the first degree. If the quantity is more than 30 grams but less than 90 grams, the penalty is a Class A felony. If the quantity is 90 grams or more, or more than 30 grams within 2000 feet of public housing or within a motor vehicle or hotel, the penalty is a Class A felony without probation or parole. (Section 195.222).

The proposal also provides that possession of more than 30 grams of any material containing any amount of the substance 3,4-methylenedioxymethamphetamine constitutes trafficking in the second degree. If the quantity is more than 30 grams but less than 90 grams, the penalty is a Class B felony; possession of 90 grams or more but less than 450 grams is a Class A felony; and possession of 450 grams or more is a Class A felony without probation or parole. (Section 195.223).

The proposal adds gamma butyrolactone and 1,4 butanediol to the list of substances for which retailers are required to report sales. Proper identification to purchase the substances need not contain a photograph or the motor vehicle license number, but must list the intended use for the substance. The reporting requirements are revised to require retailers to keep records and inventories in compliance with federal law as well as Department of Health regulations. The Department may inspect the establishment of any registrant. (Section 195.400).

DESCRIPTION (continued)

It would be unlawful to sell more than 3 packages of any methamphetamine precursors in any single over-the-counter sale. Outlet owners or operators would not be penalized if the person documents that an employee training program regarding ephedrine, pseudoephedrine, or phenylpropanolamine was in place. Violation would be a class A misdemeanor. (Section 195.417).

Retail sale of methamphetamine precursor drugs would be limited to sales in packages containing not more than a total of 3 grams of methamphetamine precursors. (Section 195.418).

The proposal would require that sellers or landlords disclose, at least 5 days prior to any real property or premises being sold or leased, that the property or premises was used to produce methamphetamine or that the property was the residence, storage site, or laboratory of a person convicted of listed crimes. (Section 441.236).

The proposed legislation would establish a Drug Courts Coordinating Commission to evaluate resources available for assessment and treatment and for the operation of drug courts. The Commission would also secure funds and services desirable to facilitate drug court operation and allocate resources among the various drug courts operating within the state. (Section 478.009).

This proposed legislation would classify the theft of any amount of anhydrous ammonia by stealing the tank truck, tank trailer, rail tank car, bulk storage tank, field tank or field applicator a class A felony. It would also classify as a class C felony the theft of any other amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen. It would also classify possession of anhydrous ammonia in a nonapproved container a class D felony. The proposal would provide owners, operators, buyers, sellers, installers, and certain others, of anhydrous ammonia containers or equipment with immunity from civil liability and suits filed by persons who engage in unauthorized tampering with such containers and equipment, or any person related to a tamperer with such containers and equipment. (Section 537.297).

Under the proposal, theft of any amount of anhydrous ammonia or liquid nitrogen, or any attempt to steal such substances would be a class C felony. Theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field tank, or field applicator would be a class B felony. (Section 570.030).

The proposal would create the class D felony of possession of anhydrous ammonia in a nonapproved container. (Section 578.154).

DESCRIPTION (continued)

This legislation is federally mandated pursuant to Title 21 CFR 1308.11, CFR 1308.13, and CFR 1308.14. This legislation does not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Prosecution Services
Office of State Treasurer
Department of Mental Health
Department of Health
Department of Social Services
Office of Administration
Office of State Courts Administrator
Department of Corrections
Office of State Public Defender
Department of Public Safety
– Missouri State Highway Patrol



Jeanne Jarrett, CPA
Director

May 30, 2001